

# United States Department of the Interior



FISH AND WILDLIFE SERVICE

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M.24-STB (ICC) Tongue River Railroad

January 12, 2006

Ms. Victoria Rutson, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

Dear Ms. Rutson:

This letter is a recommendation to the Surface Transportation Board (STB) to request a suspension of formal consultation on the Tongue River Railroad Company's (TRRC) proposed rail construction and operation of the Tongue River Railroad in Rosebud, Custer, and Big Horn Counties, Montana (log number 6MT-06-F02B). The STB should submit revisions to the Biological Assessment (BA) as necessary to reconvene the formal consultation process.

As part of our policy, the U.S. Fish and Wildlife Service (Service) strives to address problematic issues during informal consultation, before the formal consultation process is initiated. On November 16, 2005, we acknowledged the receipt of your September 20, 2005 letter, and September 2005 Biological Assessment requesting initiation of formal section 7 consultation under the Endangered Species Act. During the Upper Basin Pallid Sturgeon Working Group meetings in Miles City, Montana on December 1, 2005; discussions with Montana Fish, Wildlife and Parks (FWP) personnel, revealed that there are significant issues to be resolved on the impacts of the Tongue River Railroad on pallid sturgeon (*Scaphirhynchus albus*) at the Miles City Fish Hatchery. Discussions with FWP and newly acquired information, leads us to believe the statement "*TRRC and MTDFWP have developed an agreement on addressing potential impacts to fish at the Miles City Fish hatchery from increased vibration due to passing trains, if such increase does occur ...*" in your BA is not correct. We recognize that several important issues have been resolved, but significant possible impacts remain.

On December 7, 2005, Lou Hanebury of our Billings Sub Office, and Gary Bertellotti, FWP, discussed these and other issues with your consultant, Mary Bean of Circle Point. On January 4, 2005, we further discussed these issues with Mary Bean and Kenneth Blodgett of your staff. The Service believes it is prudent to adequately examine the possible effects of the railroad

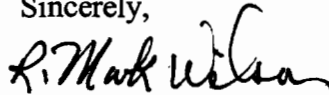
on pallid sturgeon and to clarify the "common carrier" status of the railroad in informal consultation, and address these issues in one comprehensive biological opinion.

The Service has had a positive working relationship with the Interstate Commerce Commission in the past and with its successor, the STB. We recommend that the STB, TRRC, the consultants and state agencies begin meeting to formulate amenable solutions to the unresolved issues.

When we all agree to reconvene formal consultation, the Service will be expedient as possible to complete the consultation process.

If you have any questions or concerns about this consultation or the consultation in general, please feel free to contact me or Lou Hanebury of our Billings Sub Office at (406) 247-7366.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Mark Wilson". The signature is fluid and cursive, with the first name "R. Mark" and last name "Wilson" clearly distinguishable.

R. Mark Wilson  
Field Supervisor

cc: USFWS, Billings, MT (Attn: Lou Hanebury)  
DOI, Office of the Secretary, Denver, CO (Attn: Robert Stewart)  
EPA, Helena, MT. (Attn: Steve Potts)  
FWP, Helena, MT. (Attn: Gary Bertellotti)  
FWP, Billings, MT. (Attn: Allison Putniak)  
Circle Point, San Francisco, CA (Attn: Mary Bean)